

ORDINANCE NO. 2017-11-068

AN ORDINANCE APPROVING AMENDMENT NO. 1 TO A POWER PURCHASE AGREEMENT WITH WCP SOLAR SERVICES, LLC

WHEREAS, on December 19, 2016, the City Council passed Ordinance No. 2016-12-114, approving a power purchase agreement with WCP Solar Services, LLC; and

WHEREAS, WCP Solar Services, LLC and the City of Urbana have determined that the best interests of both parties are served by making and entering into an amendment to such agreement, as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1.

An amendment to the power purchase agreement between WCP Solar Services, LLC and the City of Urbana, in substantially the form of the copy of the instrument entitled, "Amendment No. 1 to Power Purchase Agreement," attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2.

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said amendment as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4.

This Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this 4th day of December, 2017.


AYES: Ammons, Brown, Hazen, Jakobsson, Miller, Roberts, Wu

NAYS:

ABSTENTIONS:


Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this 5th day of December, 2017


Diane Wolfe Marlin, Mayor

AMENDMENT NO. 1 TO POWER PURCHASE AGREEMENT

WCP Solar Services, LLC, an Illinois limited liability company ("Provider"), and the City of Urbana, an Illinois municipal corporation ("Purchaser"), mutually agree to the following amendments to the Power Purchase Agreement authorized by Ordinance No. 2016-12-114 and entered into on December 21, 2016:


1. Exhibit D-1, "Description of Premises," is attached to and made a part of this amendment.
2. Exhibit D is hereby replaced in its entirety by Exhibit D-1.
3. All references to "Exhibit D" are changed to "Exhibit D-1."
4. All references to "1210 East University Avenue" are changed to "901 North Smith Road."
5. All other terms and conditions of the agreement remain in full force and effect.
6. This amendment will take effect upon execution by the Provider and the Purchaser.

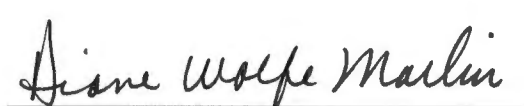
The parties are signing this agreement on the dates indicated below their signatures.

WCP Solar Services, LLC

City of Urbana, Illinois

By: WCP Realty, LLC
a Manager

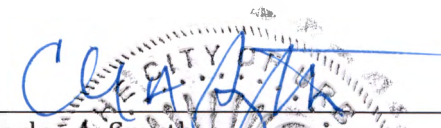
By: 
Dr. Everton Walters
its Manager

By: 
Diane Wolfe Marlin
Mayor

Date: November 21, 2017

Date: 12.5.17
2017

Attest:


Charles A. Smyth
City Clerk
Ordinance No. 2017-VI-068

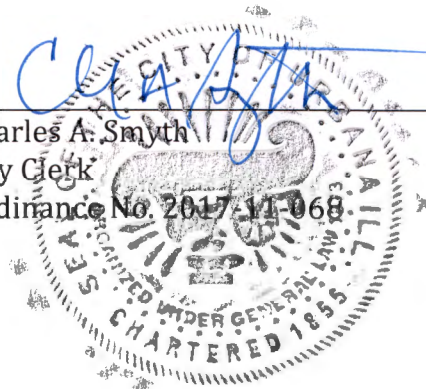


Exhibit D-1

A part of the Northwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, being a part of Tract II, as shown on a plat of survey prepared by Thomas B. Jordan, Illinois Professional Land Surveyor Number 2014, dated November 5, 1982 and recorded in Plat Book "Z" at page 23 as Document Number 1982R14957 in the Office of the Recorder of Deeds, Champaign County, Illinois, being more particularly described as follows:

Commencing at the southwest corner of the Northwest Quarter of said Section 10, also being the southwest corner of said Tract II; thence, North 00 degrees 33 minutes 18 seconds West, along the west line of said Northwest Quarter, also being the west line of said Tract II, 363.53 feet; thence, North 89 degrees 26 minutes 42 seconds East, along a line perpendicular to the west line of said Northwest Quarter, 649.72 feet, to the Point of Beginning; thence, continuing North 89 degrees 26 minutes 42 seconds East, 185.00 feet; thence, South 00 degrees 33 minutes 18 seconds East, along a line parallel with the west line of said Northwest Quarter, 168.00 feet; thence, North 57 degrees 01 minutes 54 seconds West 150.00 feet; thence North 81 degrees 55 minutes 51 seconds West 100.00 feet; thence North 20 degrees 07 minutes 43 seconds West 133.04 feet, to the Point of Beginning. Said tract containing 22,352.546 square feet (0.513 acres) more or less, all situated in the City of Urbana, Champaign County, Illinois.

A handwritten signature in black ink, appearing to be 'D. Jordan', written over a horizontal line.



1057 Shore Road, NAPERVILLE, • IL • 60563
(630) 729-2099 (PHONE) • (630) 995-3457 (FAX)

CONTRACTING AGREEMENT

This Contracting Agreement (hereinafter referred to as the Agreement) dated this **1st** day of **March, 2017** is made between WCP Solar Services, LLC, 1057 Shore Rd., Naperville, Illinois, 60563 (hereinafter referred to as "Contractor") and **WCP Financials LLC., 1057 Shore Road, Naperville, IL 60563** (hereinafter referred to as "Owner") and together referred to as "the Parties". Contractor and Owner hereby agree as follows:

IN CONSIDERATION OF the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

Services Provided

1. The Owner hereby agrees to engage the Contractor to provide the Owner with services (the "Services") consisting of designing, building, and installing a solar photovoltaic system as defined in the Scope of Work. The Contractor hereby agrees to provide to the Owner the services set forth in the Scope of Work.
2. The Project shall be constructed on the property of the Owner located at **1210 East University Ave, Urbana, IL 61802** and more particularly described as hereafter "the Work Site".
3. Owner confirms that the Work Site is Owner's property. Owner shall defend, indemnify and hold the Contractor, its officers, officials, and employees harmless from any and all claims, complaints, injuries, damages, losses or suits including attorney fees, against Contractor arising out of claims made by parties other than Owner claiming an ownership interest in the Work Site.

Scope of Work

4. The Contractor shall design and install a grid-tied solar photovoltaic systems having a combined name plate capacity of **14.88-kWp** that will provide renewable energy to the Work Site. Energy developed by the solar photovoltaic system shall be supplied to the Work Site and excess energy supplied directly to the existing grid network.
5. The Solar plant shall be developed and shall be comprised of a **14.88-kWp ballasted ground mounted system**.
6. The system shall include solar photovoltaic collectors, mounting supports, and inverters.
7. The Contractor shall provide design drawings.
8. The Contractor shall develop As-Builts and an operation and maintenance manual upon completion of the installation of the solar photovoltaic system.

Work Site

9. Owner hereby authorizes the Contractor to commence and complete work on the Work Site as may be required in order to effectively complete the project.
10. Owner understands that construction on the Work Site shall include the installation of a solar photovoltaic system on the site as described in the Contract Drawing.

Project Schedule

11. The Contractor shall develop and maintain an active project schedule in an electronic format and shall host progress meetings with the Owner or their representative to discuss the work flow and schedule.

12. The Contractor shall complete the installation of the solar photovoltaic system (weather permitting) within four (4) months after all of the following events have occurred:
 - a. the execution of the contract,
 - b. the issuance of the notice to proceed, and
 - c. the initial payment is made as set forth in this Agreement.
13. If the installment payments are not made by Owner in a timely manner, Contractor has no obligation to complete the Project.

Permits

14. The Owner with the aid of the Contractor shall apply for and obtain such permits and regulatory approvals as may be required by the local municipal/county government. Contractor shall develop and submit to the local municipal/county government required drawings, specifications, and other such material as needed to satisfy the permit requirements.
15. No construction or site preparation work will be initiated until all necessary permits are obtained from the relevant authorities for the subject Work Sites and Owner has paid for all permits in full.

Interconnection Permit

16. Interconnection permit from the utility shall be applied for by the Contractor but the Owner shall be responsible and shall pay all fees for the interconnection of the solar plant to the grid over and above the application fees, including any subsequent upgrades that may be required by the utility.

Survey and Title

17. The Contractor shall perform all necessary surveys of the Work Sites as needed to perform the design and installation. Payments for all surveys shall be the sole responsibility of the Owner and are an expense above and beyond the Contract Price.

Performance

18. Contractor may, at its discretion, engage licensed subcontractors to perform work pursuant to this Agreement.

Term of Agreement

19. The term of this Agreement will begin on the date of the execution of this Agreement by all parties and will remain in full force and effect until the completion of the Services, subject to early termination as provided in this agreement.

Compensation

20. For the services rendered by the Contractor as required by this Agreement, the Owner will pay to the Contractor compensation amounting to **\$39,076.27**
21. This compensation will be payable on the following basis;
 - a. **Thirty percent (\$11,722.88)** upon execution of this Agreement and the issuance of the notice to proceed.
 - b. **Thirty percent (\$11,722.88)** upon completion of the design of the system and the submission of all installation permits for the installation of the solar photovoltaic system required by the local municipality/county government.
 - c. **Thirty percent (\$11,722.88)** upon completion of the installation of the solar photovoltaic system.
 - d. Final payment of **Ten percent (\$3,907.63)** upon completion of project and the delivery of completion certificate to the Owner. Completion certificate shall include approval from the City of the installation and all As-Builts.

- e. The total project cost of **(\$39,076.27)** represents a lump sum project cost, including all project materials.
22. In addition to the lump sum project cost, the Owner is responsible for costs of all sales and use tax on materials and other items purchased for the Project, and increases in the Project Cost set forth in change orders.

Work Changes / Additional Compensation

23. Owner and Contractor reserve the right to order work changes in the nature of additions, deletions, or modifications, without invalidating the contract, and agree to make corresponding adjustments in the contract price. All changes must be authorized by a written change order signed by the Owner and Contractor setting forth the changes to this Agreement and the price associated with said change. Work may be changed, and the contract price may be modified only as set out in the written change order. Any adjustment in the contract sum resulting in a credit or a charge to the owner will be determined by mutual agreement of the parties before starting the work involved in the change.

Insurance

24. Insurance required on this project shall be in accordance with the following minimums. During the performance of the Services under this Agreement and for a period of six months after completion of the Project, Contractor shall maintain the following insurance with carriers having a Best's rating of at least A- and authorized to do business in the state of Illinois.
- a. **General Liability** – a coverage with a limit of not less than \$1,000,000 per occurrence/\$2,000,000 aggregate, including a per-project endorsement.
 - b. **Automobile Liability Insurance** – to include coverage for all hired, owned, and non-owned vehicles, with a not less than \$1,000,000 per occurrence/\$1,000,000 aggregate.
 - c. **Workers' Compensation Insurance** – statutory amount in accordance with the laws of the state in which the Services are being performed, and Employers Liability Insurance with limits according to such statutory requirements but shall be no less than \$1,000,000 for each accident or disease.
 - d. **Umbrella Insurance** – The above limits of insurance requirements may be satisfied by obtaining umbrella insurance in sufficient amounts.
 - e. **Professional Liability Insurance** – with limits of not less than \$2,000,000 per claim and annual aggregate.

Advertisements and Promotions

25. Contractor reserves the right to use the installation within its promotional material.

System Start Up

26. The Contractor shall within ten (10) days of the scheduled start up of the system, provide the Owner with the schedule startup date.

Modification of Agreement

27. Any amendment or modification of this Agreement or additional obligation assumed by either party in connection with this Agreement will only be binding if evidenced in writing and agreed to and signed by each party or an authorized representative of each party.

Capacity/Independent Contractor

28. It is expressly agreed that the Contractor is acting as an independent contractor and not as an employee in providing the Services under this Agreement. The Contractor and the Owner acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service.

Costs and Legal Expenses

29. In the event that Contractor must bring legal action to enforce any term of this Agreement against Owner, Contractor shall be entitled to recover, in addition to

any other damages or award, all reasonable legal expenses and fees associated with the action.

30. In the event that Owner must bring legal action, Contractor's total liability for any breach of this Agreement, for any failure to perform any term of this Agreement, for any claims relating to or arising out of its performance of this Agreement, and for its own ordinary or gross negligence (but not its reckless or willful misconduct) in any aspect of its relationship with Owner shall not exceed the monies paid to and received by Contractor under this Agreement.

Notice

31. All notices, requests, demands, or other communications required or permitted by the terms of this Agreement will be given in writing (email is acceptable) and delivered to the parties of this Agreement as follows:

- a. **WCP Financials, LLC.**
c/o Dr. Everton Walters
1057 Shore Road
Naperville, IL 60563
Email: Drwally@Wcpsolar.com
- b. WCP Solar Services, LLC
Dr. Everton Walters
President/CEO
1057 Shore Rd.,
Naperville, IL 60540
Email: info@wcp solar.com

or to such other address as to which any Party may from time to time notify the other of in writing.

Acts Beyond Control

32. Contractor shall not be liable for any delay due to circumstances beyond its control including but not limited to strikes, permit approvals, casualty, acts of God, illness, injury, weather, soil conditions, or general unavailability of materials.

Warranty and Consultation Services

33. The Contractor shall provide a general warranty that shall be limited to defects in workmanship that may arise and become known within Five (5) years from the Project Completion Date.
34. The Warranty for Materials shall be that provided by the material provider. Contractor shall have no obligations to Owner regarding the material warranties.
35. The Contractor shall provide consultation services for a period of Ten (10) years following the Project Completion Date. Consultation services shall include the following:
 - a. Answering questions concerning the maintenance and functionality of the system.
 - b. Contractor shall maintain the solar plant for a period of Ten (10) years after the commission of the project.
36. Contractor shall provide a three-year (3) warranty of performance of the commissioned solar plant beginning on the Project Completion Date and shall guarantee that the solar plant shall not produce less than 80% of the stated average production indicated on the proposal as determined by annual measurements on a yearly basis over a 3-year period.

Currency

37. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in US Dollars.

Titles/Headings

38. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement.

Gender

39. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Entire Agreement

40. This agreement consists of the following documents:

- a. This Agreement in its entirety
- b. The following, which may be delivered, prepared, or issued after the effective date of this Agreement and are not attached hereto:
 1. All Work Change Directives and Change Orders amending, modifying, or supplementing the Contract Documents.
 2. Contract Specifications as developed in the execution of this Agreement. All apparatus cited in specification sheets are subject to change but shall be similar or equal in all respects to the cited material in this document.
 3. Proposal Spreadsheet as presented and attached to this Agreement.
 4. Contract Drawings as developed in the execution of this Agreement.

Governing Law

41. It is the intention of the parties to this Agreement that this Agreement and the performance under this Agreement and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the Illinois state laws. The parties agree that any legal disputes shall be filed in the Circuit Court of Cook County, Illinois or the Circuit Court of DuPage County, Illinois.

Termination of Contract

42. The Client may terminate this agreement within 3 calendar days from the date of execution for any reason, real or imagined. However, this rescission option is vacated after the 3 days have expired and the contract takes full effect at that time.
43. The Contractor may terminate this agreement at any time based on any material breach of the terms of the contract including failure of the Owner to make a payment on time as specified in this Agreement.

Waiver

44. The waiver by either party of a breach, default, delay, or omission of any of the provisions of this Agreement by the other party will not be construed as a waiver of any subsequent breach of the same or other provisions.


Miscellaneous

45. The Owner and Contractor each binds itself, its partners, successors, and assigns, in respect to all covenants, agreements, and obligations contained within the Contract Documents.
46. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound.
47. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

48. This Agreement may be executed in any number of counterparts, each of which is deemed an original but all of which constitute the same instrument. This Agreement may be executed by the exchange of faxed executed copies, certified electronic signatures or copies delivered by electronic mail in Adobe Portable Document Format or similar format, and any signature transmitted by such means for the purpose of executing this Agreement is deemed an original signature for purposes of this Agreement.

SIGNED, SEALED, AND DELIVERED

Owner




WCP Financials, LLC - Dr. Everton Walters
President/CEO

3/1/17

Date

Contractor



WCP Solar Services, LLC
Dr. Everton Walters
President/CEO

3/1/17

Date

WCP SOLAR

Naperville, IL • 60563
(630) 729-2099 (phone) • (630) 995-3927 (FAX)

ASSUMPTION AND ASSIGNMENT OF CONTRACT AGREEMENT

This Assumption and Assignment of Contract Agreement is made this 2nd day of April, 2017, by and between WCP Solar Services, LLC, ("Assignor"), a Illinois limited liability company with its principal place of business at 1057 Shore Rd., Naperville, IL 60563, and WCP Financials, LLC, ("Assignee"), an Illinois limited liability company with its principal place of business at 1057 Shore Rd., Naperville, IL 60563, and hereby agrees as follows:

- 1. Transfer to Assignee.** Assignor assigns to Assignee all rights, title and interest under the Power Purchase Agreement, ("PPA"), between the Assignor as Provider and City of Urbana as Purchaser. The PPA was for the installation of a 14.88 kWp solar photovoltaic system at 1210 East University Avenue, Urbana, IL 61802 and was executed at WCP Solar Services, LLC located at 1057 Shore Road, Naperville, IL 60563 on February 2, 2017. A true copy of the PPA is attached hereto as Exhibit "A" and made a part of this Assignment.
- 2. Assignor Warranties.** Assignor warrants and represents that said PPA is in full force and effect and is fully assignable. Assignor further warrants that it has the full right and authority to transfer said PPA and that contract rights herein transferred are free of lien, encumbrance or adverse claim. Assignor also warrants that said PPA has not been modified and remains on the terms contained therein.
- 3. Assignee Assumption of PPA.** Assignee hereby assumes and agrees to perform all remaining obligations of Assignor under the PPA and agrees to indemnify and hold Assignor harmless from any claim or demand resulting from non-performance by Assignee. Assignee shall be entitled to all monies remaining to be paid under the contract, which rights are also assigned hereunder.
- 4. Consideration.** As consideration for the Assignment under this Agreement, Assignee agrees to engage Assignor to perform engineering, construction, and installation services, ("Services"), for the system described in the PPA for valuable consideration. The terms and conditions of such Services is subject to the Photovoltaic System Supply and Installation Agreement, entered in to between Assignor and Assignee; a true copy of which is attached hereto as Exhibit "B" and made a part of this Agreement.
- 5. Reimbursement for Assignor's Performance.** To the extent that the Assignor may be required by the city of Urbana to perform any duty delegated to the Assignee under this Assignment, or to be required to do so by virtue of the Assignee's failure to perform or to perform correctly, the Assignee agrees to reimburse the Assignor in any amount equal to what the Assignee would have had to pay to any qualified third party in a competitive market to perform the equivalent tasks. This reimbursement shall not be less than the price of performance in terms of its proportionate amount of the total price under the assigned PPA.
- 6. Severability.** If any provision of this Agreement is held invalid or unenforceable, the remainder shall continue in full force and effect and shall be unaffected.
- 7. Entire Agreement.** This Agreement and its accompanying attachments, agreements, and addendums as articulated herein, contain the complete and exclusive statement of the Agreement between Assignor and Assignee and cannot be amended, altered, or changed, except by written instrument signed by the Parties.
- 8. Choice of Law, Venue, Jurisdiction.** This Agreement shall be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, Parties by their duly authorized representatives, have executed this Agreement effective from the Effective Date.

WCP Solar Services, LLC

Assignor

Signature: _____

Print Name: Dr. Everton Waters

Date: April 02, 2017

WCP Financials, LLC

Assignee

Signature: _____

Print Name: Dr. Everton Waters

Date: April 02, 2017

STATE OF Illinois
COUNTY OF DuPage

STATE OF Illinois
COUNTY OF DuPage

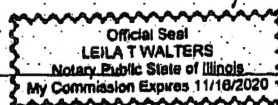
Subscribed and sworn to before me this 2nd day of

April, 2017.

Subscribed and sworn to before me this 2nd day of

April, 2017.

Leila T. Walters
Notary Public



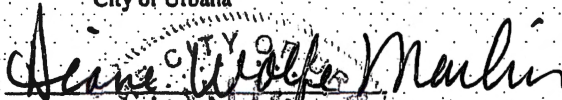
Leila T. Walters
Notary Public

CONSENT

I consent to the assignment of the above described contract to WCP Financials, LLC and expressly accept the delegation of duties to that party. I expressly reserve all rights against the Assignor under both the original PPA and the above assignment.

Executed at Urbana, IL 3:45 PM on 6/6/2018 (Date)

City of Urbana

Signature: 

Print Name: Diane Wolfe Marlin

Title: Mayor

